

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-010686

01/03/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

C TIMOTHY WHITE

FRANK R MEAD

v.

NORTHWEST AIRLINES CORPORATION

TIMOTHY J WATSON

REMAND DESK CV-CCC  
SCOTTSDALE JUSTICE COURT

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

This case arises out of a summary judgment granted in Appellee's favor, concerning an airline ticket that Appellant purchased for a flight on Appellee's airline. Appellee overbooked Appellant's flight and directed Appellant to the customer service counter. Here, Appellant was given a Denied Boarding Statement that gave Appellant the option to accept minimal compensation or "decline the payment and seek to recover damages in a court of law or in some other manner."<sup>1</sup> Appellant chose to seek damages and filed suit in the Scottsdale Justice Court.

Appellee then filed a motion for summary judgment citing Northwest Airlines' Conditions of Carriage Tariff No. DGR-1, Rule 245NW, which states:

---

<sup>1</sup> Appellant's Exhibit 1 – "Denied Boarding Statement: Passenger's Options."  
Docket Code 019

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-010686

01/03/2003

In no case shall any passenger be entitled  
To any damages (actual, compensatory, punitive or other type of damage, however named or described) for denied boarding. This rule (Rule 245NW) shall be the sole and exclusive remedy for all passengers under this section.

Appellee argues that because Appellant's ticket sleeve stated that ticketed passengers are subject to "applicable tariffs," Appellant should be precluded from bringing a suit in a court of law, despite the terms provided in Appellee's Denied Boarding Statement.

The issue before this court is whether the Scottsdale Justice Court erred by granting summary judgment in favor of Appellee in Appellant's breach of contract and consumer fraud claims. After a careful review of the record I find that the justice court did err, for disputed issues of material fact exist in this matter. Specifically, Appellee's Denied Boarding Statement and its agent's representation directly contradict Appellee's conditions of carriage, thus producing a material issue of fact as to post-contract actions.

Arizona law unmistakably states that if any doubt exists as to whether there is a disputed issue of fact, a motion for summary judgment must be denied.<sup>2</sup> Further, on appeal from an entry of summary judgment, an appellate court must view the facts in a light most favorable to the party opposing such judgment and give that party the benefit of all favorable inferences that may reasonably be drawn from those facts.<sup>3</sup>

Summary judgment is not designed to resolve factual issues but to ascertain whether such issues exist.<sup>4</sup> Clearly, a material issue of fact exists here, and the motion for summary judgment should have been denied.

IT IS THEREFORE ORDERED reversing the Scottsdale Justice Court's grant of summary judgment.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale Justice Court for all further, if any, and future proceedings.

---

<sup>2</sup> *Gatecliff v. Great Republic Life Insurance Co.*, 170 Ariz. 34, 37, 821 P.2d 725, 728 (1991).

<sup>3</sup> *Angus Medical Co. v. Digital Equipment Corp.*, 173 Ariz. 159, 840 P.2d 1024, 17 UCC Rep.Serv.2d 724 (Ariz. App. 1992); *Livingston v. Citizen's Utility, Inc.*, 107 Ariz. 62, 481 P.2d 855 (Ariz. 1971); *Gatecliff*, 170 Ariz. at 37, 821 P.2d at 728. See Ariz. Rules of Civ. Pro. Rule 56(c).

<sup>4</sup> *Yavapai County v. Wilkinson*, 111 Ariz. 530, 534 P.2d 735 (1975).